

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

KEITH RICHARDSON,

Plaintiff,

6:11-cv-1007
(GLS/ATB)

v.

NEW YORK STATE OFFICE OF
MENTAL HEALTH, CENTRAL
NEW YORK PSYCHIATRIC
CENTER et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Bosman Law Office
6599 Martin Street
Rome, NY 13440

AJ BOSMAN, ESQ.

FOR THE DEFENDANTS:

HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
Albany Office
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Albany, NY 12224

CHRISTOPHER W. HALL
Assistant Attorney General

Gary L. Sharpe
Chief Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff Keith Richardson commenced this action against defendants¹ New York State Office of Mental Health, Central New York Psychiatric Center (Center), Donald Sawyer, Maureen Bosco, Patricia Bardo, Mary Carli, William Moorehead, Corey Conley and Christine Mandigo, alleging violations of Title VII,² 42 U.S.C. §§ 1981 and 1983, New York State Human Rights and Executive Law, and state tort law. (See Am. Compl., Dkt. No. 12.) Pending is defendants' motion to dismiss. (See Dkt. No. 20.) For the reasons that follow, the motion is denied.

II. Background³

Although now retired, Richardson, an African-American male, began his employment with the Center in January 1982. (See Am. Compl. ¶¶ 2-3.) Throughout his tenure there, Richardson's evaluations were always above average, and, in February 2006, he was promoted to a Grade 20 supervisor. (See *id.* ¶¶ 5-6.) Again, Richardson's performance as a supervisor was above average, and remained as such until his demotion in

¹ Richardson also names yet to be discovered John and Jane Does in his Amended Complaint. (See Am. Compl. at 1, Dkt. No. 12.)

² See 42 U.S.C. § 2000e *et seq.*

³ The allegations are drawn from Richardson's Amended Complaint and presented in a light most favorable to him.

November 2009, less than one month after his significant other, Christine Bergerson,⁴ was successful in her lawsuit against the Center. (See *id.* ¶¶ 6-10.) That lawsuit, which resulted in a damages award of \$580,000, was premised on, among other things, the Center's unlawful termination of Bergerson, a white female, "because of her gender and 'affiliation' with a person of a different race, namely, [Richardson]."*(Id.* ¶¶ 8-9.)

Indeed, it was this relationship that Richardson believes led to his demotion. (See *id.* ¶ 11.) Despite defendants' claim that his position was "revoked" . . . due to a new Civil Service list," Richardson was not reinstated when he became "reachable" on the list." (*Id.* ¶ 10.) Instead, Bosco, Moorehead and Conley jointly decided to promote "three other employees, all White, who had less time and experience than [him]."*(Id.)* Though Richardson was not the only individual penalized for aiding Bergerson,⁵ his race and affiliation with her "were motivating and/or determining factors in [d]efendants' decision" to pass him over for promotion. (*Id.* ¶¶ 13, 15, 17-19.)

⁴ Bergerson is also referred to as Christine Fuller in the Amended Complaint. (See Am. Compl. ¶ 7.)

⁵ Employees Glen Block and Kenneth Paperrella, both of whom testified "favorably" for Bergerson, were also passed over for promotion. (*Id.* ¶ 18.)

As a result of defendants' actions, Richardson notified the Center's affirmative action officer of his concerns, and filed a complaint with the United States Equal Employment Opportunity Commission (EEOC) on September 2, 2010. (*Id.* ¶ 20.) After learning of the EEOC complaint, Bosco, Bardo, Carli and Mandigo initiated an investigation of Richardson for alleged misconduct. (See *id.* ¶ 21.) To this end, Richardson "was ordered to report for an 'interrogation' on September 20, 2010." (*Id.* ¶ 22.) For two hours, Bosco, Bardo and Carli questioned Richardson "about incidents that occurred months and even a year earlier." (*Id.* ¶ 22.) In addition, defendants interviewed Richardson's co-workers and summoned the State Police to conduct a canine search for contraband. (See *id.* ¶ 23.)

As a consequence of defendants' conduct, Richardson suffered from, *inter alia*, various physical and mental ailments, as well as a loss of "income in the form of wages, benefits, promotional opportunities and job assignments." (*Id.* ¶ 29.) He now asserts nine causes of action against defendants for discrimination, retaliation, deprivation of his First and Fourteenth Amendment rights and state tort law. (See *id.* ¶¶ 30-57.)

III. Standard of Review

The standard of review under Fed. R. Civ. P. 12 is well established

and will not be repeated here. For a full discussion of the standard, the court refers the parties to its decision in *Ellis v. Cohen & Slamowitz, LLP*, 701 F. Supp. 2d 215, 218 (N.D.N.Y. 2010).

IV. Discussion

Defendants argue that the court should decline pendent jurisdiction over the Human Rights Law claims, and dismiss the remaining causes of action for failure to state a claim. (See Dkt. No. 20, Attach. 2 at 4-19.) Richardson counters each of defendants' assertions, arguing, in essence, that his Amended Complaint is sufficient to withstand defendants' motion to dismiss. (See generally Dkt. No. 22.) The court agrees with Richardson.

At this juncture, Richardson's obligation is only to plead "factual content that allows the court to draw the reasonable inference that [defendants are] liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Simply put, defendants' arguments are wholly unconvincing. The facts pertaining to Richardson's demotion, and the investigation that ensued after he filed his EEOC complaint far exceed the "facial plausibility" threshold with respect to each of his causes of action.⁶

⁶ See, e.g., *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973) (discussing the elements of a Title VII discrimination claim); *Lore v. City of Syracuse*, 670 F.3d 127, 157 (2d Cir. 2012) (same, but Title VII retaliation claim); *Connell v. Signoracci*, 153 F.3d 74, 79 (2d Cir. 1998) (same, but First Amendment retaliation under 42 U.S.C. § 1983); *Freihofer v. Hearst*

Id. Though allegations alone will not suffice at a later stage, Richardson's Amended Complaint is unquestionably sufficient to survive a motion under Fed. R. Civ. P. 12(b)(6). As such, defendants' motion to dismiss is denied.

V. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby
ORDERED that defendants' motions to dismiss (Dkt. No. 20) is
DENIED; and it is further

ORDERED that defendants file the appropriate responsive pleadings
within the time allotted by the rules; and it is further

ORDERED that the parties notify Magistrate Judge Baxter in order to
schedule further proceedings in accordance with this order; and it is further

ORDERED that the Clerk provide a copy of this Memorandum-
Decision and Order to the parties.

IT IS SO ORDERED.

May 2, 2012



Gary L. Sharpe
Chief Judge
U.S. District Court

Corp., 65 N.Y.2d 135, 142-43 (1985) (same, but *prima facie tort*); *Reed v. A.W. Lawrence & Co., Inc.*, 95 F.3d 1170, 1177 (2d Cir. 1996) (considering plaintiff's "state law claims in tandem with [his] Title VII claims because New York courts rely on federal law when determining claims under the New York Human Rights Law"); *White v. Eastman Kodak Co.*, 368 F. App'x 200, 201 n.1 (2d Cir. 2010) (noting that the Title VII employment discrimination framework is applicable to claims under 42 U.S.C. § 1981); *Feingold v. New York*, 366 F.3d 138, 159 n.20 (2d Cir. 2004) (discussing that the key difference between Title VII and section 1983 claims is that the latter, unlike the former, can be brought against individuals).

Albany, New York